

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES of AMERICA,

-Against-

ANDREW BARTOK,

**S4 10 Cr. 510 (CS)**

Defendant.

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**DEFENDANT ANDREW BARTOK'S**  
**RULE 33 MOTION**

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### **PRELIMINARY STATEMENT**

This motion is made pursuant to Rule 33 of the Federal Rules of Criminal Procedure (hereinafter "Rule 33"), to request a new trial in the interest of justice and based on the insufficiency of the evidence in the above captioned case. Defendant Andrew Bartok requests that this Honorable Court review the verdicts, the summations and the credibility of the Government's witnesses to grant the herein Motion for a new trial.

#### **I. The Standard for Rule 33 Motions**

The trial court has "broad discretion" to grant a new trial under Rule 33 if for any reason it concludes that the trial has resulted in a miscarriage of justice. United States v. Sanchez, 969 F.2d 1409, 1413 (2d Cir. 1992).<sup>1</sup>

The Court should grant a new trial where it would constitute a manifest injustice to allow the verdict to stand. Id. at 1414. In the instant case, the interests of

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<sup>1</sup> Because Rule 33 vests broad discretion in the district court, a decision to grant (or deny) a Rule 33 motion is reviewed on appeal only for "abuse of discretion." United States v. Ferguson, 246 F.3d 129, 133 (2d Cir. 2001).

justice require a new trial because the verdict was against the weight of the prosecution's evidence.

The Court has broad discretion when determining a Rule 33 Motion. On a Rule 33 Motion, this honorable Court need not view evidence in light most favorable to the Government. It may weigh the evidence and consider the credibility of witnesses. United States v. Sanchez, 969 F.2d 1409, 1413 (2d Cir.1992).

The Court may grant a new trial when "despite the abstract sufficiency of the evidence to sustain the verdict, the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred." U.S. v. Thomas, 894 F.Supp. 58 (N.D.N.Y. 1995); United States v. Lincoln, 630 F.2d 1313, 1319 (8th Cir.1980).

## **II. Motion to Set Aside The Verdict on Insufficiency of the Evidence Grounds**

Andrew Bartok's trial commenced on October 4, 2012. The Government presented volumes of documentary evidence consisting of bankruptcy filings, court notices and letters

addressed to bankruptcy petitioners/Revelations customers regarding 341 meetings, bankruptcy court orders addressed to Revelations' employees and like records.

Notably, the Government failed to present any direct evidence of Andrew Bartok's intent to defraud customers. Each witness who testified against Andrew Bartok failed to tell this Court how Mr. Bartok engaged in activities with the specific intent to hurt or defraud others.

Lastly, each witness testified that Revelations' customers stayed in their homes for extended periods as a result of Revelations' services. After each witness failed to pay their monthly mortgage payments and received subsequent eviction notices, they sought Andrew Bartok's help. Customers started talking about the successful delays of their foreclosures. These witnesses sought a way to stay in their homes and needed to delay their foreclosures. Andrew Bartok and Revelations Consulting provided the customers with tools to do just this.

Customers sought, contracted and paid for Revelations' services, and these same services were the subject of the Government's prosecution in Indictment S4 10 Cr. 510.

**A. Witness Testimony Did Not Support a Finding That The Defendant Had The Requisite Intent to Be Criminally Liable in The Instant Case Nor Did Testimony Support a Finding That the Defendant Conspired to Defraud Others**

Kathleen Addario and Veronica Tobin, Andrew Bartok's co-defendants in the instant matter, testified against Mr. Bartok. Nevertheless, Ms. Addario's and Ms. Tobin's testimonies revealed that Mr. Bartok lacked the requisite intent to make him criminally liable for the Government's charges in Indictment S4 10 Cr. 510. Ms. Tobin's and Ms. Addario's testimonies also failed to support a finding that Mr. Bartok conspired with Ms. Addario and Ms. Tobin to defraud others.

**1. Kathleen Addario**

Ms. Addario testified against Mr. Bartok. Ms. Addario faced one hundred eighty-five years of incarceration (185) and began her proffer negotiations with the Government nearly two years before and in preparation for trial. Ms. Addario explained to the jury that Andrew Bartok had pieced

together a foreclosure delay process. Ms. Addario also revealed that she changed and sharpened this process throughout Ms. Addario's decade long year career at Revelations Consulting.

According to Ms. Addario, for ten years Ms. Addario followed Mr. Bartok's orders. She was a tail and Mr. Bartok was the dog. See Trial Transcript ("Trial Trans."), P.234:

11 He said that the dog wags the tail, the tail  
12 doesn't wag the dog, and he's the one that set  
up how things  
13 should be done in the company and that the  
employees should  
14 follow it.

However, the jury later learned that situations change and indeed applied to the instant matter. Ms. Addario was not a tail, but rather the head of Aladdin Financial, a company that applied the same methods that Ms. Addario had developed over the years at Revelations Consulting.

See Trial Trans., P.377:

17 Q. And when you left Revelations, how many  
clients did you  
18 take with you to Aladdin that had been  
Revelations clients?  
19 A. I didn't take any with me to  
Aladdin. The clients that  
20 decided to come was just about all the  
clients, about a hundred

21 clients that came over, just about every client  
originally came

See Trial Trans., P.378:

2 Q. Are you actually making a  
distinction between taking  
3 clients or inviting clients and they  
deciding to come with you,  
4 is that different for you?  
5 A. Yes.  
6 Q. What's the difference?  
7 A. The difference is that I left and I  
told the clients if  
8 they wanted, to come with me. The  
difference to me is I gave  
9 the clients the choice to choose if they wanted  
to come with me  
10 or stay with Revelations. It was never just  
come with me,

Ms. Addario held such a pronounced and lead role at Revelations that one hundred (100) Revelations customers followed her to a new company, Aladdin Financial, which Ms. Addario created. Correspondingly, Ms. Addario helped lead the Government's prosecution of Andrew Bartok with her testimony.

When testifying about underlying acts of the conspiracy charged in the Indictment, Ms. Addario told the jury that it was Mr. Bartok who engaged in and who instituted each alleged criminal act.

See Trial Trans., P.251:

2       A     Every practice that we practiced in  
Revelations was what  
3       Andrew told us to do at the beginning and  
we followed out  
4       what Andrew said to do.

See Trial Trans., P. 234:

3       Q     One of the names you mentioned was  
Andrew Bartok. Did  
4       you ever -- when, when you saw him sign  
other people's names,  
5       can you describe how he did it?  
6       A     He would look at their -- he would  
look at their  
7       signature and copy their signature.

See Trial Trans., P.233 - 234:

25    Q     Did you ever hear Andrew Bartok say  
anything concerning  
1       what creditor should be listed on  
bankruptcy petitions?  
2       A     It was Andrew Bartok who decided to  
just put the  
3       mortgage company down. Andrew Bartok is  
the first person  
4       that was doing the bankruptcies and that  
was his way of, of  
5       doing the bankruptcy.

Remarkably, Ms. Addario neglected to include in her testimony any proffer that Andrew Bartok knew his actions were unlawful or that Mr. Bartok promoted and shared his foreclosure delay process in order to defraud others. Also, Ms. Addario did not explain how Mr. Bartok exhibited a



desire to conspire with her against others. While Ms. Addario repeatedly told jurors that Mr. Bartok violated bankruptcy laws, her testimony did not describe how Mr. Bartok exhibited knowledge of or purposeful disregard of criminal laws with respect to Revelations' activities.

Kate Addario's testimony showed this Court that she herself did not have the requisite intent to be found guilty of a conspiracy. Ms. Addario explained to the jury, "At first .. I believed that we were helping people and Andrew had been in it for himself so everything was within the law, otherwise how would he be able to do it for himself." See Trial Trans., P.435. Also that Andrew Bartok had "said, that we were sort of flying below radar, but everything was within the law." See Trial Trans., P.435.

Notably, Ms. Addario testified that Ms. Addario changed her mind about Revelations' business practices being lawful only after authorities had told Ms. Addario that Revelations' business practices were unlawful.

Finally, Ms. Addario ended her story with the most telling statements of her testimony. Ms. Addario informed

the Court that despite having developed and managed her own separate client-base in New York, Ms. Addario allowed Andrew Bartok to be liable for problems with her New York clients. See Trial Trans., P.388-389:

8 Q. And you get this order to appear. Andrew  
says he'll take  
9 care of it, right?  
10 A. Correct.  
11 Q. And basically he was taking the weight for  
what happened  
12 with your case, your client, right?  
13 A. It was his client and it was his business by  
his own  
14 admission so he said he was going to handle it.  
15 Q. And Andrew writes a letter to the judge and  
he says this is  
16 my business and I will deal with this and we've  
seen some of  
17 those exhibits, correct?  
18 A. Correct.  
19 Q. And you let him do that and go in for you  
because you  
20 thought he would protect you and take care of you  
are, correct?  
21 A. Yes.  
22 Q. Now, I think that you told the government on  
a couple of  
23 different occasions that there were a few reasons  
why you  
24 didn't show up when a federal judge told you to  
show up. One  
25 is that you were just plain scared, right?  
1 A. Right.  
2 Q. At that point you figure you're scared, a  
federal judge  
3 comes in, you think the best thing to do is just  
ignore the  
4 situation, right?  
5 A. Yes.

6 Q. And then you've told the government on  
several occasions  
7 that you figured Andrew taking care of it was  
going to cover  
8 you, right?  
9 A. I was hoping.

Kate Addario allowed Andrew Bartok to take responsibility for problems that her business practices created. Ms. Addario's testimony did not show that Andrew Bartok knew or consciously disregarded the fact that the Government would find Revelations' business activities unlawful.

## **2. Veronica Tobin**

Veronica Tobin testified as a Government witness. The progression of Ms. Tobin's relationship and friendship with Mr. Bartok revealed Mr. Bartok's motivations behind his work at Revelations. While Andrew Bartok collected fees from his clients, he wanted to and did help hundreds of customers delay foreclosures, including Ms. Tobin. Some clients were provided services in exchange for fee based on a sliding scale. In Ms. Tobin's case, Mr. Bartok took significant steps to help her improve her financial status.

See Trial Trans., P.1202-1203:

21 A. When I was a customer of Revelations, my  
income was  
22 extremely limited. There were some days where I had  
to  
23 drive down to pick up paperwork, but I didn't have  
enough  
24 money to put gas in my car. So, he told me to go  
fill up,  
25 told me to go get gas and he'll reimburse me for my  
expenses  
1 for the trip down.  
2 And then after my -- after a while I started to go  
down  
3 there and hang out because I felt very comfortable  
there  
4 with everything I was going through my own personal  
life.

After Revelations helped Ms. Tobin delay the  
foreclosure of her home, Ms. Tobin began working for  
Revelations and developed a trusting relationship with Mr.  
Bartok. Ms. Tobin began managing the office when Mr. Bartok  
was not present. See Trial Trans., P.1208:

3 Q. And you trusted Mr. Bartok a lot, correct?  
4 A. Yes.  
5 Q. And Mr. Bartok trusted you a lot, correct?  
6 A. Yes.  
7 Q. And, in fact, there did come a time that Mr.  
Bartok  
8 went into semi-retirement, correct?  
9 A. He spoke of it.

According to Ms. Tobin, over the years, Ms. Tobin  
naturally learned about Revelations employees, Mr. Bartok

and their volatile relationships. Andrew Bartok and Kate Addario managed their clients separately. Mr. Bartok managed New Jersey clients. Ms. Addario managed New York clients.

See Trial Trans., P.1183:

- 15 Q. In fact, Kate's -- Katherine Addario's clients  
were  
16 from New York, correct? That's who she tried to  
cultivate,  
17 correct?  
18 A. Yes.  
19 Q. And you and Andrew tried to cultivate clients  
from New  
20 Jersey, correct?  
21 A. Yes.

Ms. Tobin testified that Ms. Addario managed her clients with results in stark contrast with Mr. Bartok's clients and services. Ms. Tobin and a number of Government witnesses testified that they were injured by Ms. Addario's work.

See Trial Trans., P.1213-1214:

- 19 Q. Did you tell the government in one of your  
proffer  
20 sessions that Katherine Addario was the one who had  
problems  
21 with the clients and not Andrew Bartok?  
22 Did you tell the government that in one of your  
23 meetings, yes or no?  
24 THE COURT: Why don't you ask whether that's  
true.  
25 Q. Is that true?  
1 THE COURT: And then, if you need to refer back to  
2 something the witness said previously, you can, but  
you need

3 to start with whether it's true.  
4 A. It's true. Customers would call Kathleen  
Addario, and  
5 if there were any issues with the customer pertaining  
to any  
6 paperwork for any payments or anything pertaining with  
7 Revelations, it would go through her first and then  
Kathleen  
8 would make an inquiry to -- with Andrew.

Kate Addario drew a clear line between herself and Mr.  
Bartok. According to Ms. Tobin, Ms. Addario purposefully  
separated herself from Mr. Bartok and the rest of the  
office. See Trial Trans., P.1194-1195:

24 A. In the North Bergen office there was a lot of  
closed  
25 doors with Kathleen and Alex in Alex's office with the  
doors  
1 closed. There were several occasions where I've seen  
2 Kathleen's office -- Kathleen's door closed with  
customers  
3 in her office.

Ms. Tobin also testified that her intentions, like Mr.  
Bartok's intentions, were to help clients, not to defraud  
them. Ms. Tobin made clear that she and Mr. Bartok did not  
conspire to defraud and injure others.

See Trial Trans., P.1175:

11 Q. And you were loyal to Mr. Bartok, correct?  
12 A. Yes.  
13 Q. And Mr. Bartok was loyal to you, correct?  
14 A. Yes.  
15 Q. And you kept working together.  
16 A. Yes.  
17 Q. Because your purpose was to continue helping

people  
18 stay in their homes, correct?  
19 A. Yes.  
20 Q. And that was the whole goal of Revelations,  
correct?  
21 A. Yes.  
22 Q. So that people who could not pay their mortgage  
23 payments could stay in their houses longer, correct?  
24 A. Yes.

Ms. Tobin also explained to the Court that she and Mr. Bartok wrote motions for clients in attempts to save their homes. Here the Court could not have found that the parties intended and conspired to defraud others.

See Trial Trans., P.1195:

17 Q. And it was your purpose to do that because you  
wanted  
18 the motions to win, correct, like you wanted to be  
19 successful on the motions.  
20 A. Yes.  
21 Q. To help the clients stay in their houses longer,  
22 correct?  
23 A. Yes.

In fact, Ms. Tobin's testimony showed no intention on the part of Revelations to disregard laws. Andrew Bartok and Revelations employed methods that stretched federal bankruptcy codes, but Revelations employees viewed the methods as being lawful. Here, reasonable jurors could not have found that Andrew Bartok conspired with other Revelations employees to engage in criminal acts.

See Trial Trans., P.1196:

- 11 Q. And did you think there was anything illegal  
12 about this  
13 durable power of attorneys when you were working with  
14 Revelations when you first had started?  
15 A. At that time, no, because I had to sign one  
16 myself.  
17 Q. And did you ever have discussions with Mr. Bartok  
18 about  
19 the durable power of attorney that he had his  
20 customers  
21 sign?  
22 A. No.

**III. Motion to Set Aside The Verdict on Grounds That  
Jury Charges Were Incomplete**

Defendant maintains that the jury charges in the instant matter were incomplete. First, this Court instructed the jury that 18 U.S.C. 1001(a) applied to Count Six of the Government's Indictment. Allegedly, Mr. Bartok concealed material facts from, and made material false statements to, a United States Bankruptcy Judge. 18 U.S.C. 1001(a) provides:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or



(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section [2331](#)), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section [1591](#), then the term of imprisonment imposed under this section shall be not more than 8 years.

This Court provided the jury with a scope for Count Six by instructing the jury that it may find Mr. Bartok guilty of Count Six (6) if jurors believed that Mr. Bartok made or used a "false, fictitious, or fraudulent" statements, representations or writings within the jurisdiction of the United States Government.

Here, Mr. Bartok maintains that the Court should have instructed the jury that subsection (b) of 18 U.S.C. 1001 also applied to Count Six. Mr. Bartok provided services to clients through power of attorney forms. Through the forms, Mr. Bartok was made a party to the bankruptcy proceedings at issue. 18 U.S.C. 1001(b) provides:

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

While Mr. Bartok does not deny that he assisted clients in their foreclosure and bankruptcy cases, Mr. Bartok submits that 18 U.S.C. 1001(b) shields him from prosecution for statements, representations and/or writings submitted to judges or magistrates in proceedings.

#### **CONCLUSION**

This case is a product of the United States' collapse of the 2008 mortgage crisis and the United States court system's natural and protracted response to the collapse's impact. Millions of homeowners have and are facing foreclosure due to unsuitable loans presented to unassuming mortgagees by aggressive mortgagors. Defendant Andrew Bartok and Revelations Consulting *et al* provided homeowners with methods to delay foreclosures. The homeowners or customers in the instant matter willingly and knowingly employed Revelations' methods in order to save their homes.

The testimonies discussed above describe Andrew Bartok's intent to run a foreclosure delay business while helping others. The Government's Case-in-Chief did not establish Mr. Bartok's intent to defraud customers or courts, as highlighted above.

In sum, Mr. Bartok and Revelations Consulting responded to an unprecedented and exigent time when large banks foresaw a profitable opportunity and overshot their marketing and sales of unsuitable mortgages to millions of people. These mortgagees lived within the Southern District of New York and the rest of the country. The defendants in the instant case did not have intent to defraud or conspire against customers, but rather responded to a need to help others.

On the very day that the jury handed up its verdict for Indictment S4 10 Cr. 510, the United States Attorney released a forceful statement about the fraud perpetrated by the banks in the mortgage lending industry.

Those mortgages were purchased by government-backed mortgage finance firms Fannie Mae and Freddie Mac, resulting in over \$1 billion in losses for taxpayers and countless foreclosures, according to the complaint

announced Wednesday by the U.S. Attorney for the Southern District of New York.

"For the sixth time in less than 18 months, this office has been compelled to sue a major U.S. bank for reckless mortgage practices in the lead-up to the financial crisis," said U.S. Attorney Preet Bharara in a statement. "The fraudulent conduct alleged in today's complaint was spectacularly brazen in scope."<sup>2</sup>

**WHEREFORE**, Defendant Movant Andrew Bartok prays that this Honorable Court grant a new trial in this action. In light of the evidence before the Court, the guilty verdicts on Counts One through Seven are against the weight of the evidence and should not stand.

Dated: New York, New York  
November 18, 2012

Respectfully submitted,

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<sup>2</sup> October 24, 2012 Press Release, The United States Attorney's Office: Manhattan U.S. Attorney Sues Bank Of America For Over \$1 Billion For Multi-Year Mortgage Fraud Against Government Sponsored Entities Fannie Mae And Freddie Mac, <http://www.justice.gov/usao/nys/pressreleases/October12/BankofAmericanSuit.php>.